



State of New Jersey

DIVISION OF THE RATEPAYER ADVOCATE
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CHRISTINE TODD WHITMAN
Governor

BLOSSOM A. PERETZ, ESQ.
*Ratepayer Advocate
and Director*

August 14, 1996

VIA EXPRESS MAIL

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

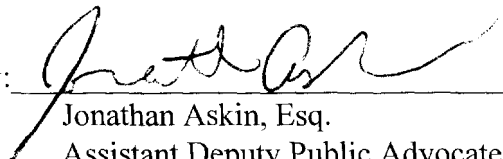
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Re: In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area
(CC Docket 96-149)

TO THE HONORABLE COMMISSION:

Enclosed please find an original and eleven copies of Comments to be filed with the Commission in the above-referenced matter. Please time/date stamp the copy marked "File" and return it to this office in the enclosed, self-addressed stamped envelope.

Respectfully submitted,
Blossom Peretz, Ratepayer Advocate

By: 
Jonathan Askin, Esq.
Assistant Deputy Public Advocate

Enc.

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The Honorable Commissioners of the New Jersey Board of Public Utilities
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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COMMENTS OF THE NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE

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COMMENTS REGARDING STRUCTURAL SEPARATION
REQUIREMENTS OF SECTION 272NPRM at ¶¶ 55-64

New Jersey Division of the Ratepayer Advocate

August 15, 1996

On behalf of ratepayers in the State of New Jersey, the New Jersey Division of the Ratepayer Advocate ("Ratepayer Advocate") submits these comments in response to the Notice of Proposed Rulemaking, In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket 96-149 ("NPRM"), adopted by the Federal Communications Commission ("FCC") on July 17, 1996 and released by the FCC on July 18, 1996. These comments respond to the FCC's request for comments in the NPRM, Section IV, Paragraphs 55-64, regarding the structural separation requirements of Section 272 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Telecom Act").

The Ratepayer Advocate is statutorily empowered to represent and protect the interests of New Jersey's utility consumers -- residential, small business, commercial and industrial -- to ensure that they receive safe, adequate and proper utility service at affordable rates that are just, reasonable and nondiscriminatory.

The Ratepayer Advocate encourages a competitive interexchange marketplace and, to that end, believes entry by Bell Operating Companies ("BOCs") into in-region interexchange service markets should further serve to increase options and reduce rates for consumers of telecommunications services. As such, the Ratepayer Advocate generally supports the intentions of Congress in the Telecom Act and the FCC in the NPRM to allow BOCs entry into the interexchange market through separate affiliates.

The Ratepayer Advocate, however, is concerned that, without strong structural separations between the BOC and its separate affiliates ("Affiliated IXCs") that effectively

restrict BOC dealings with its Affiliated IXC's, a BOC may have unfair advantages over competitors offering interexchange services within the BOC's local exchange area. Such unfair advantages may hinder competition and thwart consumer access to alternative interexchange service providers and low rates. As such, the Ratepayer Advocate supports an expansive interpretation of the structural separation requirements laid out in Section 272(b) of the Telecom Act and delineated by the FCC in paragraphs 55-64 of the NPRM. The Ratepayer Advocate believes at a minimum that the Affiliated IXC must adhere to the five requirements enumerated in Section 272(b) of the Telecom Act and fleshed out by the FCC in the NPRM. Specifically, the Affiliated IXC must:

- (1) operate independently from the Bell Operating Company ("BOC");
- (2) maintain books, records, and accounts in the manner prescribed by the FCC which shall be separate from the books, records, and accounts maintained by the BOC of which it is an affiliate;
- (3) have separate officers, directors, and employees from the BOC of which it is an affiliate;
- (4) may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the BOC; and
- (5) conduct all transactions with the BOC of which it is an affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection.

Telecom Act, § 272(b).

The Ratepayer Advocate proposes further that the FCC impose the following standards on BOCs hoping to provide in-region interexchange service through a separate affiliate:

- (1) A BOC shall conduct all business with its Affiliated IXC in the same manner as it conducts its business with similarly situated non-affiliated IXC's.
- (2) A BOC shall enforce the terms and conditions in any agreements entered into with

an Affiliated IXC to the same extent as it would enforce such provisions against a non-affiliated IXCs.

- (3) A BOC shall not give its Affiliate IXC or its Affiliated IXC's customers preference over non-affiliated IXCs or non-affiliated IXCs' customers.
- (4) A BOC shall not give its Affiliated IXC or the Affiliated IXC's customers a preference in the processing of requests for services over non-affiliated IXCs or non-affiliated IXCS' CUSTOMERS.
- (5) A BOC shall not disclose or cause to be disclosed to its Affiliated IXC or any non-affiliated IXCs any information it receives through dealings with any other IXCs, which information has not otherwise been publicly disclosed.
- (6) To the extent it provides to an Affiliated IXC information related to interexchange service, or information related to the BOC's own business, which is not readily available or generally known to other IXCs, a BOC shall provide that information contemporaneously to all non-affiliated IXCs operating within its local exchange area.
- (7) Employees of the BOC shall not be shared with, and shall be physically separated from its Affiliated IXC.
- (8) The BOC must charge the Affiliated IXC the fully allocated costs for any general and administrative and support services provided to the Affiliated IXC.
- (9) A BOC shall not condition or tie an offer or agreement to provide a discount to any service in which the Affiliated IXC is involved. If a BOC provides a discount to any IXC, that BOC shall file, subject to an appropriate protective order, the transaction with the FCC and the state regulatory authority. Such filing shall disclose whether the Affiliated IXC is, in any way, benefited by the discount.
- (10) A BOC offering any services to its Affiliated IXC must make such services available to all other similarly situated IXCs on an equal and non-discriminatory basis.
- (11) A BOC shall not condition or tie agreements to any service in which its Affiliated IXC is involved.
- (12) A BOC shall establish and publicly file with the FCC and the state regulatory authority a complaint procedure for alleged violations of any of these standards (including the standards enumerated in Section 272(b) of the Telecom Act and any further standards promulgated by the FCC pursuant to Section 272 of the

Telecom Act). Such complaint procedure shall contain the following provisions:

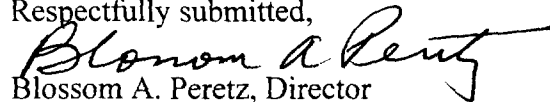
- (A) All verbal or written complaints are to be referred to the BOC's designated executive officer or representative.
 - (B) The designated individual shall within ten (10) working days after receipt of the complaint prepare and mail to the complainant an acknowledgment of receipt of the complaint.
 - (C) The designated individual shall conduct a thorough investigation and shall communicate the result of the investigation to the complainant in writing within thirty (30) days after the complaint is received, including any course of action which will be taken.
 - (D) The designated individual shall provide to the FCC and the state regulatory authority a log of all new, resolved and pending complaints within ten (10) working days after the end of each month. This log will contain, at a minimum, the date the complaint was received by the BOC, the name of the complainant, a brief description of the complaint and, as applicable, how resolved or reason still pending.
- (13) A complainant not satisfied by BOCs's response to its allegation should so inform the FCC and the state regulatory authority in writing, with copies of the complaint and any correspondence provided by the BOC in response to the complaint within thirty (30) days of such response.

Due to the emerging nature of the competitive telecommunications marketplace, the Ratepayer Advocate suggests that these standards be reviewed periodically to ensure that the rules are effectively fostering a fair and competitive telecommunications marketplace and affording consumers maximum options and minimal rates.

The Ratepayer Advocate believes that the foregoing standards should be made applicable to any BOC hoping to provide interexchange services originating in the BOC's local exchange area. The intent of these standards of conduct is to ensure that BOCs treat their Affiliated IXCs as they would any other third party. The standards are also intended to promote fair competition

and a level playing field among all participants in the newly competitive telecommunications marketplace. The standards are not intended to supplant pre-existing federal and state standards, orders or proceedings which address such issues as cross-subsidization of, or transactions between, affiliated telecommunications providers, nor to diminish the authority of state utility regulatory commissions in matters currently within their jurisdiction.

Respectfully submitted,



Blossom A. Peretz, Director

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Dated: August 14, 1996